IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5071 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMANBHAI K PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5071 of 2004

MR AS SUPEHIA for Petitioner No. 1

MR SP HASURKAR, AGP for Respondent No. 1

MS SEJAL K MANDAVIA for Respondent Nos. 2 & 3

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 01/03/2005

ORAL JUDGEMENT

Rule. Learned AGP Mr.Hasurkar waives service of notice of rule on behalf of respondent No.1 and

Ms.Mandavia waives service of rule on behalf of respondent Nos.2 & 3. At the joint request of the learned advocates appearing for the parties, the petition is taken up for final disposal today.

2. In the present petition, the petitioner has prayed for being paid the arrears of pay and other benefits as per the order dated 23.5.02. The petitioner who was in the employment of respondent Nos.2 & 3 and retired on superannuation with effect from 31st March, 1998. However, by subsequent order dated 23.5.02, the petitioner and some other employees of the Panchayat were granted retrospective promotions. In case of the petitioner, however, this promotion order was not implemented and arrears were not paid to the petitioner. The petitioner has, therefore, approached this Court for the above reliefs.

3. The respondents Nos.2 & 3 have filed affidavit in reply resisting the petitions. It is contended that since the petitioner had refused to accept promotion in the past, he was not entitled to receive higher grade scale. It is further sated that now that the petitioner is inclined to accept the salary of Work Assistant from 1st July 1987, the Panchayat may withdraw the benefit of higher pay-scale and thereafter he would be given the salary of Work Assistant.

4. In response to the above averments made in the affidavit in reply, counsel for the petitioner submits that the petitioner is prepared to forego the benefits of higher pay-scale granted to him in the past and his case, therefore, should be considered for promotion as clarified by the respondents in the affidavit in reply.

5. Considering the submissions made, it is directed that if the petitioner approaches the authorities with a written undertaking that he would be foregoing the benefits of higher pay-scale granted to him and that he would be willing for refund/adjustment of the additional pay and other emoluments given to him by virtue of grant of such higher pay-scale, the respondent shall implement the promotion order dated 23.5.02 in his favour and take such consequential steps as found necessary including payment of arrears if found due to the petitioner. His pension also will be suitably refixed upon completion of this exercise.

6. With the above directions, the petition is disposed of. Rule is made absolute to the above extent with no order as to costs.

(Akil Kureshi, J.)

(vjn)